

**Subpart A—General Provisions****§ 37.1 Scope.**

The provisions of this part shall apply to every swap execution facility that is registered or is applying to become registered as a swap execution facility under section 5h of the Commodity Exchange Act (“the Act”); provided, however, nothing in this provision affects the eligibility of swap execution facilities to operate under the provisions of parts 38 or 49 of this chapter.

**§ 37.2 Applicable provisions.**

A swap execution facility shall comply with the requirements of this part and all other applicable Commission regulations, including § 1.60 and part 9 of this chapter, and including any related definitions and cross-referenced sections.

**§ 37.3 Requirements and procedures for registration.**

(a) *Requirements for registration.* (1) Any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform shall register the facility as a swap execution facility under this part or as a designated contract market under part 38 of this chapter.

(2) *Minimum trading functionality.* A swap execution facility shall, at a minimum, offer an Order Book as defined in paragraph (a)(3) of this section.

(3) *Order book means:*

(i) An electronic trading facility, as that term is defined in section 1a(16) of the Act;

(ii) A trading facility, as that term is defined in section 1a(51) of the Act; or

(iii) A trading system or platform in which all market participants in the trading system or platform have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers.

(b) *Procedures for full registration.* (1) An applicant requesting registration as a swap execution facility shall:

(i) File electronically a complete Form SEF as set forth in appendix A to

this part, or any successor forms, and all information and documentation described in such forms with the Secretary of the Commission in the form and manner specified by the Commission;

(ii) Provide to the Commission, upon the Commission’s request, any additional information and documentation necessary to review an application; and

(iii) Request from the Commission a unique, extensible, alphanumeric code for the purpose of identifying the swap execution facility pursuant to part 45 of this chapter.

(2) *Request for confidential treatment.*

(i) An applicant requesting registration as a swap execution facility shall identify with particularity any information in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of this chapter.

(ii) Section 40.8 of this chapter sets forth those sections of the application that will be made publicly available, notwithstanding a request for confidential treatment pursuant to § 145.9 of this chapter.

(3) *Amendment of application prior or subsequent to full registration.* An applicant amending a pending application for registration as a swap execution facility or requesting an amendment to an order of registration shall file an amended application electronically with the Secretary of the Commission in the manner specified by the Commission. A swap execution facility shall file any amendment to an application subsequent to registration as a submission under part 40 of this chapter or as specified by the Commission.

(4) *Effect of incomplete application.* If an application is incomplete pursuant to paragraph (b)(1) of this section, the Commission shall notify the applicant that its application will not be deemed to have been submitted for purposes of the Commission’s review.

(5) *Commission review period.* For an applicant who submits its application for registration as a swap execution facility on or after August 5, 2015 the Commission shall review such application pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act.

(6) *Commission determination.* (i) The Commission shall issue an order granting registration upon a Commission determination, in its own discretion, that the applicant has demonstrated compliance with the Act and the Commission's regulations applicable to swap execution facilities. If deemed appropriate, the Commission may issue an order granting registration subject to conditions.

(ii) The Commission may issue an order denying registration upon a Commission determination, in its own discretion, that the applicant has not demonstrated compliance with the Act and the Commission's regulations applicable to swap execution facilities.

(c) *Temporary registration.* An applicant seeking registration as a swap execution facility may request that the Commission grant the applicant temporary registration by complying with the requirements in paragraph (c)(1) of this section.

(1) *Requirements for temporary registration.* The Commission shall grant a request for temporary registration upon a Commission determination that the applicant has:

(i) Completed all of the requirements under paragraph (b)(1)(i) of this section; and

(ii) Submitted a notice to the Commission, concurrent with the filing of the application under paragraph (b)(1)(i) of this section, requesting that the Commission grant the applicant temporary registration. An applicant that is currently operating a swaps-trading platform in reliance upon either an exemption granted by the Commission or some form of no-action relief granted by the Commission staff shall include in such notice a certification that the applicant is operating pursuant to such exemption or no-action relief.

(iii) The Commission may deny a request for temporary registration upon a Commission determination that the applicant has not met the requirements under paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) *Operation pursuant to a grant of temporary registration.* An applicant may operate as a swap execution facility under temporary registration upon receipt of a notice from the Commission

granting such temporary registration, but in no case may begin operating as a temporarily registered swap execution facility before August 5, 2013.

(3) *Expiration of temporary registration.* The temporary registration for a swap execution facility shall expire on the earlier of the date that:

(i) The Commission grants or denies registration of the swap execution facility as provided under paragraph (b) of this section;

(ii) The swap execution facility withdraws its application for registration pursuant to paragraph (f) of this section; or

(iii) Temporary registration terminates pursuant to paragraph (c)(5) of this section.

(4) *Effect of temporary registration.* A grant of temporary registration by the Commission does not affect the right of the Commission to grant or deny registration as provided under paragraph (b) of this section.

(5) *Termination of temporary registration.* Paragraph (c) of this section shall terminate two years from the effective date of this regulation except as provided for under paragraph (c)(6) of this section and except for an applicant who requested that the Commission grant the applicant temporary registration by complying with the requirements in paragraph (c)(1) of this section before the termination of paragraph (c) of this section and has not been granted or denied registration under paragraph (b)(6) of this section by the time of the termination of paragraph (c) of this section. Such an applicant may operate as a swap execution facility under temporary registration upon receipt of a notice from the Commission granting such temporary registration until the Commission grants or denies registration pursuant to paragraph (b)(6) of this section. On the termination date of paragraph (c) of this section, the Commission shall review such applicant's application pursuant to the time period and procedures in paragraph (b)(5) of this section.

(6) *Temporary registration for applicants that are operational designated contract markets.* An applicant that is an operational designated contract market and is also seeking to register as a swap execution facility in order to

transfer one or more of its contracts may request that the Commission grant the applicant temporary registration by complying with the requirements in paragraph (c)(1) of this section. The termination of temporary registration provision in paragraph (c)(5) of this section shall not apply to an applicant that is a non-dormant designated contract market as described in this paragraph.

(d) *Reinstatement of dormant registration.* A dormant swap execution facility as defined in section 40.1 of this chapter may reinstate its registration under the procedures of paragraph (b) of this section. The applicant may rely upon previously submitted materials if such materials accurately describe the dormant swap execution facility's conditions at the time that it applies for reinstatement of its registration.

(e) *Request for transfer of registration.*

(1) A swap execution facility seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Secretary of the Commission in the form and manner specified by the Commission.

(2) *Timeline for filing a request for transfer of registration.* A request for transfer of registration shall be filed no later than three months prior to the anticipated corporate change; or in the event that the swap execution facility could not have known of the anticipated change three months prior to the anticipated change, as soon as it knows of such change.

(3) *Required information.* The request for transfer of registration shall include the following:

(i) The underlying agreement that governs the corporate change;

(ii) A description of the corporate change, including the reason for the change and its impact on the swap execution facility, including its governance and operations, and its impact on the rights and obligations of market participants;

(iii) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to swap execution facilities, and the Commission's regulations thereunder;

(iv) The governing documents of the transferee, including, but not limited to, articles of incorporation and by-laws;

(v) The transferee's rules marked to show changes from the current rules of the swap execution facility;

(vi) A representation by the transferee that it:

(A) Will be the surviving entity and successor-in-interest to the transferor swap execution facility and will retain and assume, without limitation, all of the assets and liabilities of the transferor;

(B) Will assume responsibility for complying with all applicable provisions of the Act and the Commission's regulations promulgated thereunder, including this part and appendices thereto;

(C) Will assume, maintain, and enforce all rules implementing and complying with the core principles applicable to swap execution facilities, including the adoption of the transferor's rulebook, as amended in the request, and that any such amendments will be submitted to the Commission pursuant to section 5c(c) of the Act and part 40 of this chapter;

(D) Will comply with all self-regulatory responsibilities except if otherwise indicated in the request, and will maintain and enforce all self-regulatory programs; and

(E) Will notify market participants of all changes to the transferor's rulebook prior to the transfer and will further notify market participants of the concurrent transfer of the registration to the transferee upon Commission approval and issuance of an order permitting this transfer.

(vii) A representation by the transferee that upon the transfer:

(A) It will assume responsibility for and maintain compliance with core principles for all swaps previously made available for trading through the transferor, whether by certification or approval; and

(B) None of the proposed rule changes will affect the rights and obligations of any market participant.

(4) *Commission determination.* Upon review of a request for transfer of registration, the Commission, as soon as

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practicable, shall issue an order either approving or denying the request.

(f) *Request for withdrawal of application for registration.* An applicant for registration as a swap execution facility may withdraw its application submitted pursuant to paragraph (b) of this section by filing a withdrawal request electronically with the Secretary of the Commission. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application was pending with the Commission.

(g) *Request for vacation of registration.* A swap execution facility may request that its registration be vacated under section 7 of the Act by filing a vacation request electronically with the Secretary of the Commission. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the swap execution facility was registered by the Commission.

(h) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, upon consultation with the General Counsel or the General Counsel's delegate, authority to notify an applicant seeking registration that its application is incomplete and that it will not be deemed to have been submitted for purposes of the Commission's review, to notify an applicant seeking registration under section 6(a) of the Act that its application is materially incomplete and the running of the 180-day period is stayed, and to notify an applicant seeking temporary registration that its request is granted or denied. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

EFFECTIVE DATE NOTE: At 78 FR 33582, June 4, 2013, § 37.3 was revised, effective Aug. 5, 2013 except for (b)(5) which is effective Aug. 5, 2015.

### § 37.4 Procedures for listing products and implementing rules.

(a) An applicant for registration as a swap execution facility may submit a swap's terms and conditions prior to listing the product as part of its application for registration.

(b) Any swap terms and conditions or rules submitted as part of a swap execution facility's application for registration shall be considered for approval by the Commission at the time the Commission issues the swap execution facility's order of registration.

(c) After the Commission issues the order of registration, a swap execution facility shall submit a swap's terms and conditions, including amendments to such terms and conditions, new rules, or rule amendments pursuant to the procedures under part 40 of this chapter.

(d) Any swap terms and conditions or rules submitted as part of an application to reinstate the registration of a dormant swap execution facility, as defined in § 40.1 of this chapter, shall be considered for approval by the Commission at the time the Commission approves the dormant swap execution facility's reinstatement of registration.

### § 37.5 Information relating to swap execution facility compliance.

(a) *Request for information.* Upon the Commission's request, a swap execution facility shall file with the Commission information related to its business as a swap execution facility in the form and manner and within the time period as the Commission specifies in its request.

(b) *Demonstration of compliance.* Upon the Commission's request, a swap execution facility shall file with the Commission a written demonstration, containing supporting data, information, and documents that it is in compliance with one or more core principles or with its other obligations under the Act or the Commission's regulations as the Commission specifies in its request. The swap execution facility shall file such written demonstration in the form and manner and within the time period as the Commission specifies in its request.